

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

JOHN T. WILLIAMS, *et. al.*,

Plaintiffs,

v.

JANET F. KING, *et. al.*,

Defendants.

Case No. 3:22-CV-00230-ART-CLB

**REPORT AND RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE<sup>1</sup>**

Before the Court is Plaintiff John T. Williams and Williams, Scott & Associates LLC (collectively referred to as “Plaintiffs”), application to proceed *in forma pauperis* (ECF No. 1), and *pro se* civil rights complaint (ECF No. 1-2). For the reasons stated below, the Court recommends that the *in forma pauperis* application, (ECF No. 1), be granted, and the complaint, (ECF No. 1-2), be dismissed, without prejudice.

**I. IN FORMA PAUPERIS APPLICATION**

A person may be granted permission to proceed *in forma pauperis* (“IFP”) if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

Pursuant to LSR 1-1: “Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the

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<sup>1</sup> This Report and Recommendation is made to the Honorable Anne R. Traum, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 applicant's income, assets, expenses, and liabilities."

2 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with  
3 some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th  
4 Cir. 1981) (quotation marks and citation omitted). A litigant need not "be absolutely  
5 destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*,  
6 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Plaintiffs cannot pay the filing  
8 fee; therefore, the Court recommends that the application, (ECF No. 1), be granted.

## 9 **II. SCREENING STANDARD**

10 Prior to ordering service on any Defendant, the Court is required to screen an *in*  
11 *forma pauperis* complaint to determine whether dismissal is appropriate under certain  
12 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28  
13 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint  
14 for the enumerated reasons). Such screening is required before a litigation proceeding  
15 *in forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507  
16 (9th Cir. 2015).

17 "[T]he court shall dismiss the case at any time if the court determines that – (A)  
18 the allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or  
19 malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks  
20 monetary relief against a defendant who is immune from such relief." 28 U.S.C. §  
21 1915(e)(2)(A), (B)(i)-(iii).

22 Dismissal of a complaint for failure to state a claim upon which relief may be  
23 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §  
24 1915(e)(2)(B)(ii) tracks that language. When reviewing the adequacy of a complaint  
25 under this statute, the court applies the same standard as is applied under Rule 12(b)(6).  
26 See, e.g., *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for  
27 determining whether a plaintiff has failed to state a claim upon which relief can be granted  
28 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6)

1 standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling  
2 on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir.  
3 2000) (citation omitted).

4 The Court must accept as true the allegations, construe the pleadings in the light  
5 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*  
6 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in *pro se* complaints  
7 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes*  
8 *v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

9 A complaint must contain more than a “formulaic recitation of the elements of a  
10 cause of actions,” it must contain factual allegations sufficient to “raise a right to relief  
11 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
12 “The pleading must contain something more. . . than. . . a statement of facts that merely  
13 creates a suspicion [of] a legally cognizable right of action.” *Id.* (citation and quotation  
14 marks omitted). At a minimum, a plaintiff should include “enough facts to state a claim to  
15 relief that is plausible on its face.” *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662,  
16 678 (2009).

17 A dismissal should not be without leave to amend unless it is clear from the face  
18 of the complaint the action is frivolous and could not be amended to state a federal claim,  
19 or the district court lacks subject matter jurisdiction over the action. *See Cato v. United*  
20 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th  
21 Cir. 1990).

### 22 **III. SCREENING OF COMPLAINT**

23 The complaint asserts violations of 42 U.S.C. § 1983 and claims under *Bivens v.*  
24 *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and  
25 relates to underlying criminal proceedings and convictions that occurred in the State of  
26 Georgia. (ECF No. 1-2.) Plaintiffs assert these claims against Defendants District Court  
27 Judge Janet F. King and Circuit Court Judge Richard J. Sullivan and seek declaratory  
28 and monetary relief. (*Id.* at 5, 27.)

1           There is no indication that any of the individual defendants reside in the District of  
2 Nevada. Instead, the factual allegations, while confusing, reveal that the underlying  
3 criminal proceeding took place in the District of Georgia. However, a civil action must be  
4 brought in (1) a judicial district in which any *defendant* resides, if all defendants reside in  
5 the same state where the district is located, (2) a judicial district in which a substantial  
6 part of the events or omissions giving rise to the claim occurred, or a substantial part of  
7 property that is the subject of the action is situated, or (3) a judicial district in which any  
8 defendant is subject to personal jurisdiction at the time the action is commenced, if there  
9 is no district in which the action may otherwise be brought. 28 U.S.C. § 1391(b).

10           Williams has not alleged that any defendant resides in the District of Nevada, that  
11 any of the events giving rise to the action transpired here and he has not otherwise  
12 alleged any connection to this District. Therefore, it appears the Court lacks personal  
13 jurisdiction over the defendants and venue is improper here. The action should be  
14 dismissed, without prejudice, only to the extent Williams may file a complaint stating  
15 plausible claims for relief in the correct court.

#### 16 **IV. CONCLUSION**

17           Consistent with the above, the Court finds that dismissal is warranted based on a  
18 lack of personal jurisdiction and improper venue.

19           The parties are advised:

20           1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
21 Practice, the parties may file specific written objections to this Report and  
22 Recommendation within fourteen days of receipt. These objections should be entitled  
23 "Objections to Magistrate Judge's Report and Recommendation" and should be  
24 accompanied by points and authorities for consideration by the District Court.

25           2. This Report and Recommendation is not an appealable order and any  
26 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the  
27 District Court's judgment.

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1 **V. RECOMMENDATION**

2 **IT IS THEREFORE RECOMMENDED** that Plaintiffs' application to proceed *in*  
3 *forma pauperis*, (ECF No. 1), be **GRANTED**;

4 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 1-  
5 2);

6 **IT IS FURTHER RECOMMENDED** that the complaint, (ECF No. 1-2), be  
7 **DISMISSED, WITHOUT PREJUDICE**, to the extent Plaintiffs can assert plausible claims  
8 for relief in the correct court; and,

9 **IT IS FURTHER RECOMMENDED** that this action be **CLOSED** and that judgment  
10 be entered accordingly.

11 **DATED:** May 24, 2022.

12   
13 **UNITED STATES MAGISTRATE JUDGE**